

- a first spacer formed of a non-metal material, the first spacer being sized such that it is receivable in the window in an exposed position for transverse fastening through the bone support implant and through the first spacer with a bone fastener; and
- a second spacer formed separately from the first spacer, the second spacer being sized such that it is receivable in the window in an exposed position for transverse fastening through the bone support implant and through the second spacer with a bone fastener, the second spacer having different mechanical or chemical treatment properties than the first spacer.

47. (Previously Presented) The intramedullary nail assembly of claim 45, wherein the different mechanical or chemical treatment properties are selected from the group consisting of: different hardness, different rates of absorption, different active agents and different amounts of active agents.

48. (New) The bone support assembly of claim 41, wherein the first insert is formed separately from the bone support implant, such that the first insert is insertable into the first window.

#### **REMARKS**

This is in response to the Office Action mailed January 30, 2004 in which claims 1-12 and 35-47 were pending. Claims 1-10 and 35 were rejected over the prior art, and claims 11, 12 and 36-47 were allowed. With this amendment claim 4 is canceled and claims 1-3, 5-10 and 35 are amended to depend from a previously allowed claim. All claims are in condition for allowance, and reconsideration and notice to that effect is respectfully requested.

Claims 1-10 and 35 were reject over the prior art. Claims 1, 3, 7 and 8 are amended to depend from previously allowed claim 36, and further amended to provide antecedent basis for various claim terms. Claims 2 is amended to depend from previously allowed claim 45, and further amended to provide proper antecedent basis in the preamble. Claims 5, 6, 10 and 35 are amended to

depend from previously allowed claim 11, and further amended to provide antecedent basis for various claim terms. Claim 9 is amended to depend from previously allowed claim 41, and further amended to provide proper antecedent basis in the preamble. Claim 4 is canceled. Thus, all rejected claims either depend from a previously allowed claim or are canceled.

Applicant respectfully thanks the Examiner for the allowance of claims 11, 12 and 36-47. Claim 45 is amended to change the term "insert" to the term "spacer", clarifying that it does not rely on patentability for any difference in meaning between "insert" and "spacer" and making it consistent with claim 2. Claims 11, 12, 36-44, 46 and 47 remain presented in unamended form and remain allowable. New claim 48 depends from claim 41 and is likewise allowable. No new matter is added.

The application containing claims 1-3, 5-12 and 35-48 is in condition for allowance. Reconsideration and notice to that effect is respectfully requested. The Examiner is invited to contact the undersigned at the telephone number listed below if such a call would in any way facilitate allowance of the application.

The Commissioner is hereby authorized to charge any additional fee required under 37 C.F.R. 1.16 and 1.17 and credit any over payments to Deposit Account No.50-2998. Deposit Account Name: Shewchuk IP Services.

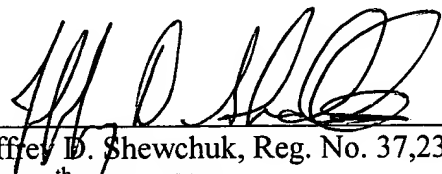
Respectfully submitted,

SHEWCHUK IP SERVICES

Date:

April 20, 2004

By

  
Jeffrey D. Shewchuk, Reg. No. 37,235  
533 77<sup>th</sup> Street West  
Eagan, MN 55121  
Telephone: (651) 331-9558  
Fax: (651) 688-3348